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AMENDED & RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
LOST CANYON ESTATES SUBDIVISION

Parcel 28-23-203-005 & all parcels in  
Subdivision

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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (hereinafter referred to as the "Declaration"), is made as of this 31<sup>st</sup> day of July, 2006, by LOST CANYON ESTATES HOME OWNERS ASSOCIATION, a UTAH NON-PROFIT CORPORATION (the "Association").

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS supersedes and replaces in its entirety the Declaration of Covenants, Conditions and Restrictions for LOST CANYON ESTATES Subdivision recorded as Entry No. 5841009, Book 6954, Page 229 in the Salt Lake County Recorder's Office and incorporates all supplements and amendments thereto as expressed herein.

## RECITALS

A. The Association is the authorized representative of the owners of certain real property known as LOST CANYON ESTATES Subdivision (the "Subdivision"), located in Sandy City, and Salt Lake County, State of Utah, and is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Project");

B. All lots in the Subdivision are a part of and are governed by this Declaration.

C. The Declarant Lost Canyon Estates, L.L.C., owns no Lots within the Project and has turned over control of the Association to the Owners; accordingly, Declarant rights have been terminated or otherwise have expired;

D. The original declaration for LOST CANYON ESTATES Subdivision was recorded June 3, 1994, as Entry No. 5841009, Book 6954, Page 229 in the Salt Lake County Recorder's Office (the "Original Declaration");

E. A First Amendment to the Declaration of Covenants, Conditions and Restrictions for LOST CANYON ESTATES Subdivision was recorded May 1, 1995, as Entry No. 6070674, Book 7142, Page 1143 in the Salt Lake County Recorder's Office;

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is intended to be the governing and controlling Declaration of Covenants, Conditions and Restrictions for LOST CANYON ESTATES Subdivision;

F. The Project is known as and shall continue to be known as LOST CANYON ESTATES Subdivision;

G. This document affects the real property located in Salt Lake County, Utah, described with particularity on Exhibit "A", attached hereto and incorporated herein by this reference;

H. The Association owns the Common Area and is the managing agent for the Lot Owners;

I. Pursuant to Article VII, Section 7.2, of the Original Declaration this AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS has been approved in writing by the Owners of not less than four (4) of the Lots in the Subdivision;

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, Association hereby makes the following Declaration;

# ARTICLE I

## DEFINITIONS

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### **Section 1.1: "Articles of Incorporation"**

Shall mean the Articles of Incorporation of Lost Canyon Estates Home Owners Association, Inc., on file with the state of Utah.

### **Section 1.2: "Association"**

Shall mean the Lost Canyon Estates Home Owners Association, Inc., comprised of each respective Owner of a Lot in the Subdivision.

### **Section 1.3: "Building Envelope"**

Shall mean that construction be confined to the designated building envelopes on plat.

### **Section 1.4: "Bylaws"**

Shall mean the Bylaws of Lost Canyon Estates Home Owners Association, Inc., which is attached hereto as Exhibit "B."

### **Section 1.5: "Common Areas"**

Shall mean the Common Area as defined on the Plat.

### **Section 1.6: "Declaration"**

Shall mean and refer to this Amended and Restated Declaration.

### **Section 1.7: "Family"**

Shall mean a group of natural persons related to each other by blood or legally related to each other by marriage or adoption.

### **Section 1.8: "Improvement"**

Shall mean any structure, Residence, building, Landscaping, garage, accessory building, fence, wall, non-living or living screen, or other structure of Landscaping, or other meaningful addition or alteration constructed or added to a Lot.

### **Section 1.9: "Landscaping"**

Shall mean lawn, shrubs, flowers, trees and natural foliage located or placed upon a Lot.

### **Section 1.10: "Lot"**

Shall mean any individual parcel shown upon the Map of the Subdivision and having an individual tax identification number, which may be legally conveyed by reference only to the number of such Lot designated on the Map.

### **Section 1.11: "Management Committee"**

Shall mean the Management Committee of the Association.

### **Section 1.12: "Map"**

Shall mean the official subdivision plat map recorded 9<sup>th</sup> day of May 1994, as Entry No. 5817790 in Book 94-5 at Page 125 of the official records in the office of the Salt Lake County Recorder, State of Utah, as the same may be amended from time to time.

### **Section 1.13: "Mortgage"**

Shall mean any instrument creating a lien with

respect to a Lot including a mortgage, deed of trust or any similar security agreement.

**Section 1.14: “Mortgagee”**

Shall mean the holder of the obligation secured by a Mortgage.

**Section 1.15: “Owner”**

Shall mean the recorded owner of a fee simple title to any Lot which is a part of the Subdivision. In an event that more than one party shall be the record Owners of a Lot, then for all purposes under this Declaration, all such parties shall be required to act jointly as one Owner of such Lot.

**Section 1.16: “Property”, “Project”, “Subdivision”**

Shall mean all the real property described in Exhibit “A” hereto, consisting of all Lots of the Subdivision.

**Section 1.17: “Residence”**

Shall mean a single building designed and constructed for residential occupancy to be occupied by a Family. Residences shall include, without limitation, homes, pool houses, carriage houses, or any other out building.

**Section 1.18: “Street”**

Shall mean all streets in the Project dedicated to Sandy City.

**Section 1.18.1: “Private Road”**

Shall mean the road that is adjacent to Lots 1, 2, 3, 9, 31, 32, 33, 34. Also lots 17, 18 and 19.



## ARTICLE II

### *SUBMISSION & PURPOSE*

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#### **Section 2.1: *Submission***

NOTES

The Property and Lots shall be held, sold, conveyed, leased, occupied, resided upon and hypothecated subject to the covenants, conditions and restrictions of this Declaration; which covenants, conditions and restrictions shall run with the land, are established for the purpose of protecting and preserving the value of each and every part of the Property, and which shall be binding upon each and every party which shall at any time have any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof.

#### **Section 2.2: *Purpose of Declaration.***

The purpose of this Declaration is to insure the use of the Property for attractive residential purposes, to prevent nuisances, to prevent the impairment of the attractiveness of the Property, and to maintain the desired tone of the Subdivision, and thereby to secure to each Owner the full benefit, enjoyment and value of their home, with no greater restriction on the free and undisturbed use of their site than is necessary to insure the same advantages to the other Owners.

## ARTICLE III

### *GENERAL RESTRICTIONS AND REQUIREMENTS*

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#### **Section 3.1: *Land Use and Building Type.***

Each Lot shall be used exclusively for the construction and occupancy of a Residence to be occupied by a Family and related Landscaping and other incidental and related Improvements. Except as may be specifically provided in Article III hereof, no building shall be erected, altered, placed or permitted to remain on any Lot other than (1) one single Family dwelling with enclosed, attached side entry garage for at least three cars.

#### **Section 3.2: *Subdivision of Lot.***

No Lot may be divided, subdivided or separated into smaller parcels unless approved in writing by one (1) the Management Committee, which approval shall be granted, if at all, in accordance with this Declaration, and (2) by Sandy City.

#### **Section 3.3: *Residence Size and Materials.***

No Structure shall be constructed upon any Lot unless such structure is within the approved building envelope. No structure shall be constructed upon any Lot unless and until the final plans and specifications for such structure shall have been submitted to and approved by the Management Committee. No single story or rambler style residence shall be constructed, altered, placed or permitted to remain on any Lot unless the main floor area, exclusive of basement, open porches, and garages, is 5,000 square feet or greater. No Multi-story residence shall be constructed, altered, placed or permitted to remain on any Lot unless the total square footage is 6,000 square feet, exclusive of basements, open

porches and garages. Attached garages shall be enclosed side or thin brick and no logs or any type of wood may be used in the exterior construction of a Residence. No siding can be used in the exterior construction of a Residence. The Management Committee may approve a home of a size smaller than as provided in this paragraph only where after considering all relevant factors it is determined to be clearly unreasonable, under the given circumstances, to require the larger sized home. If a smaller home is requested that home must be built entirely of brick or stone with an architectural design that will bring it up to the integrity and value of the surrounding homes.

The exterior of all Residences are designed to be constructed of brick and/or stone, with stucco being used for trim purposes only. Aluminum soffit and fascia trim will be allowed. Written approval by the Management Committee must be given for the use of any stucco siding materials on the exterior of a structure. If approved, stucco must be of the type "Quick R" (fiberglass foam, screen joints, prime & acrylic finish). No wood or aluminum siding materials shall be allowed on the exterior of any Residence. Roof surfaces shall be architectural shingles, concrete or bar tile, shake shingles and other wood roofing are prohibited from this Subdivision due to the possibility of fire hazard and the extensive strands of scrub oak. Other roofing materials must have written approval from the Management Committee and the City if necessary. In no case, however, shall asphalt shingles be allowed or used for roofing material for a building in the Subdivision. Colors of exterior materials shall

be earth tones, grays, and/or as otherwise approved by the Management Committee. Care should be given that each Residence compliments those around it, and not detract in design, quality or appearance. All final decisions with respect to these enumerated standards and their application to a particular proposed structure in the Subdivision shall be made by the Management Committee.

### **Section 3.4: *Building Location.***

No walls or foundation of a Residence or other structure shall be located on any Lot nearer to the front lot line or nearer to the lot lines than the minimum building set-back described in this Declaration. Notwithstanding any zoning requirements to the contrary, except where special, written approval is first given by the Management Committee and except as further provided in this paragraph with respect to Lots 1 through 33 of the Subdivision, each Residence shall be located (1) at least fifty (50) feet from the boundary line of such Lot along the Street, and (2) at least thirty (30) feet from any other boundary line, side or rear, of any Lot. The minimum setbacks for Lots 1, 6, 7, 27, 28, 33 are calculated as follows: from the boundary line of such Lot along the street to the front line of the Residence will be subject to setback approval by the Management Committee. The minimum setbacks from side boundary lines of the following Lots 10, 11, 12, 13, 32 shall be twenty (20) feet. The minimum setbacks from rear (meaning the easterly line running North and South) on Lots 28, 29 & 30 shall be twenty (20) feet from that easterly line.

The site plan showing the proposed location of all improvements to be constructed upon a Lot shall be submitted to and approved by the

Management Committee prior and timely to the commencement of any construction.

\*\*\* The grading and home placement plans must be submitted for Lots 17-26 and 28-33 at the time building permits are applied for. The grading plan shall include a driveway profile to assure conforming driveway slope.

\*\*\* All lots in the Sensitive Area Overlay Zone are required to have a minimum buildable area (land containing slope less than 30%) of 5,000 square feet (see Section 15-14-6(a)). Any Lot which does not contain the minimum amount does not qualify for a building permit.

\*\*\* All 30% slopes be designated as "Hillside Protection Easements"

### **Section 3.5: *Construction and Landscaping Time Restrictions.***

The exterior constructions of all residence or other structures shall be completed within a period of one (1) year following commencement of construction. Residential construction on all Lots shall be completed by December 31, 2009. The front and side yards of each Lot shall be landscaped with at least a sprinkling system and grass lawn, as appropriate, within a period of six (6) months following completion or occupancy of each residence, which ever shall occur first. Rear yards shall be landscaped, with at least a sprinkling system and grass lawn, as appropriate, with a period of eighteen (18) months following completion or occupancy of each residence, which ever shall occur first.

Upon purchase of any lot, the Owner must keep the lot free from any fire hazard type weeds, insect and other obnoxious problem

and thereafter each Owner must take reasonable steps to minimize and/or eliminate weed growth, insect and etc. on the Owner's Lot until such time as construction is completed.

Unless construction on a Lot is commenced within one hundred twenty (120) days of purchase, the Owner shall install an automatic sprinkling system and fire resistant landscaping, such as grass lawn, within a period of two hundred forty (240) days from purchase of the Lot. Nothing in this paragraph absolves an Owner of their obligation to keep the Lot free from weeds, insects and other obnoxious problems prior to landscaping the vacant lot.

The time periods set forth in this Section may be extended by that period of time during which access to the Lot is restricted by reason of weather, seasonal conditions an/or soil conditions which would prohibit such performance.

### **Section 3.6: *Utility Lines.***

All utility lines shall be installed underground. Connection fees shall be paid by each individual Owner.

### **Section 3.7: *Governmental Regulations.***

All applicable governmental rules, regulations, and ordinances of Sandy City, Salt Lake County or otherwise, must be complied with regarding activities within the Subdivision. When a subject is covered both by this Declaration and a governmental rule, restriction or ordinance, the more restrictive requirements shall be met.

### **Section 3.8: *Fire Protection.***

Each Residence shall have installed surrounding it a sprinkler system for fire protection which may also be used for irrigation. All residents shall strictly comply with all state and city ordinances pertaining to fire hazard control. All stacks and chimneys from fireplaces in which combustibles, other than natural gas, are burned shall be fitted with spark arresters. There shall be no exterior fires whatsoever except fires contained within appropriate receptacles in compliance with Sandy City ordinances.

### **Section 3.9: *Nuisances, Unreasonable Annoyance and Noxious Activities.***

No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an unreasonable annoyance, nuisance or danger to the Subdivision. Except for legitimate construction and maintenance purposes, no excessively loud noises shall be permitted in the Subdivision.

### **Section 3.10: *Signs.***

No signs, posters, displays or other advertising devices of any character shall be erected or maintained on, or shown or displayed to the public view on any Lot without the express written approval having been first obtained from the Association; provided, however, that the restrictions of this paragraph shall not apply to any sign or notice seven square feet or smaller in size which states that the premises are for rent or sale. The Association may cause all unauthorized signs to be removed. This section shall not apply to any signs used by the Declarant or its agents in connection with the original construction and

sale of the Lots.

**Section 3.11: *Antennas.***

Except for satellite dishes one (1) meter or less in diameter, all television and radio antennas, satellite dishes or other electronic reception devices shall be completely erected, constructed and placed within the enclosed area of Residence or garage on the Lot, or located and screened so as to not be visible from the Street or an adjacent Lot. Exceptions must first be expressly approved in writing by the Management Committee.

**Section 3.12: *Animals.***

No horses, cows, pigs, fowls or other animals other than ordinary household pets which do not constitute a nuisance, shall be allowed within the Subdivision. Dogs and cats belonging to owners, occupants or their licensees or invitees within the Property must be kept within an enclosure (or on a leash being held by a person capable of controlling the animal). The enclosure must be maintained such that the animal cannot escape therefrom. Any such contained enclosure areas must be cleaned on a regular basis to minimize odors and maintain a clean appearance. In no case may any household pet or other animal kept at or around the Residence be allowed to create a nuisance for neighboring Lot owners due to the noise, or otherwise. Outside of the Subdivision there is an arena that will contain animals. This is not part of the subdivision.

**Section 3.13: *Storage of Vehicles and Materials.***

No truck larger than 1/2-ton, trailer, or recreational vehicle, including but not limited

to campers, boats, motor homes, off-road vehicles, motorcycles and similar equipment not used on a regular basis (hereinafter collectively referred to as the "Recreational Vehicles") shall be permitted to be parked overnight or for any period of time longer than twenty-four (24) hours, upon any portion of the Streets, or on any Lot, driveway or off-street parking area of a Lot in front of the front set-back line of the Residence. The Recreational Vehicles shall be allowed to remain on the Property only if housed in a garage, carport, or Residence. Appropriate and reasonable screening for any such parking area behind the front set-back line of the Residence may be required by the Management Committee at the Committee's sole discretion and at the sole expense of the Owner. Failure to comply with the provisions hereof shall constitute a nuisance. No storage of articles, materials, equipment or vehicles of any nature is permitted in the front portion of any Lot (in front of the front set-back line of the Residence), except that a reasonable number of regularly used passenger cars, in proper working order, may be parked on driveway or off-street parking areas.

**Section 3.14: *Rubbish and Unsightly Debris, Garbage, etc.***

Notwithstanding any other provision in this Declaration, no Owner shall allow his or her Lot to become so physically encumbered with rubbish, unsightly debris, garbage, equipment, or other things or materials so as to constitute an eyesore as reasonably determined by the Management Committee or the Association. Within ten (10) days of receipt of written notification by the Association of such failure, the Owner shall be responsible to make the appropriate corrections.

**Section 3.15: Temporary Structures, etc.**

No structure of a temporary character, or trailer, camper, tent, shack, garage, or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently, unless first expressly approved in writing by the Management Committee.

**Section 3.16: Garages.**

No unattached garages will be permitted on any Lot, unless first expressly approved in writing by the Management Committee.

**Section 3.17: Non-Residential Uses Prohibited.**

No part of the Property shall be used for any commercial, manufacturing, mercantile, vending or other such non-residential purposes, provided however, that professional and administrative occupations may be carried on within the Residence so long as there exists no meaningful external evidence thereof. The Declarant, its successors or assigns may use the Property for a model home site, display and sales office during the construction and sales period.

**Section 3.18: Drilling Operations.**

No oil drilling , oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon any Lot nor shall oil wells, tunnels, mineral excavations or shafts be permitted. No derrick or other structure designed for use in drilling for oil or natural gas or water shall be erected, maintained or permitted upon any Lot.

**Section 3.19: Fences and Walls, Hedges, and Screens.**

No fences, walls, or non-living screens shall be constructed on any Lot without prior written approval having been obtained from the Management Committee, and in no event shall approval be given to pre-cast fences, wood fences or chain link fences or chain link fences which utilize vinyl, wood or metal slats.

Front yard fences, walls and/or non-living screens located entirely along City Roads shall only be permitted after the Owner receives approval from both Sandy City and the Management Committee. Private Road residence will be allowed front yard fencing with restrictions on height, type and style and will need written approval from the Management Committee. No hedges, shrubs, or other living Landscaping or screen of any kind shall be erected so as to constitute a hazard for vehicular traffic, pedestrians, children, etc., particularly near the entrances to (a) driveway(s) onto a Lot. Any solid hedge within twenty (20) feet of the front lot line shall be trimmed to a maximum height of three (3) feet.

Back yard fences are allowed in some parts of the Subdivision, and unless the Association makes changes, the only fencing allowing will be of wrought iron only. And shall extend no further along the Lot line, or otherwise, toward the front of the Lot than even with the front setback of the Residence. Any corner type Lot or any other Lot with boundaries on both streets or with a backyard towards its neighbors must have any fence approved in writing by the Management Committee.

Any fencing of an easement area must be approved by the Management Committee.

Fencing requirements must be strictly adhered to in order to retain the integrity and beauty of the Subdivision.

**Section 3.20: *Landscaping and Parking Strip.***

Only such natural foliage shall be removed from each Lot as is necessary for clearing the driveway, excavation for the foundation of the Residence or other approved structures, and for lawn and patio areas or other amenities. This restriction shall not prohibit any Owner from removing such dead, diseased or undesirable trees from the Owner's Lot as the Owner chooses, provided that the area so affected thereby is replanted by the Owner with substitute, suitable trees (height & type approved by Management Committee) and other appropriate vegetation in keeping with the spirit and intent of this Declaration to preserve the rural atmosphere and natural beauty of the Subdivision. All front yards, side yards and rear yards shall be landscaped. The use of sodded landscaping berms and approved trees is encouraged in front yard landscaping. However, those portions of rear or side yards which are located on or within natural, wooded hillsides or areas may be maintained with the natural vegetation and trees, consistent with the stated spirit and intent of the Declaration. The parking strip between curb and sidewalk, where applicable, shall be maintained by each Lot owner in a uniform manner with other parking strips in the Subdivision. Only sod and trees approved by the Management Committee shall be permitted in the parking strip. Each Lot shall be landscaped and maintained in such a manner so as to prevent any erosion thereof

upon adjacent streets or adjoining Property.

Tree height and type must be approved in writing by the Management Committee. This policy will prevent any Lot Owner from obstructing the potential view of their neighbor.

**Section 3.21. *Environmental Concerns.***

If required by Sandy City, all site plans submitted in accordance with Section 3.3 hereof shall address soils, seismic conditions, re-vegetation of natural areas (indicating areas where natural vegetation is to be removed and plans for the replanting of those areas), and grading of the site, including cuts and fills.

**Section 3.22: *"Earthquake Hazard Area"***

Each Owner must sign an earthquake disclosure statement that must be provided to Sandy City before issuance of a building permit.

**Section 3.23: *Deviations.***

Deviations from the standards set forth in this Declaration will be allowed only upon written approval by the Management Committee for good cause shown.

**Section 3.24: *Swamp Coolers.***

No swamp coolers will be allowed in this Subdivision.

**Section 3.25: *Private Roads.***

Owners that purchase Lots along a private road must enter into a written agreement (which passes with the land) to timely pay their equal share of any snow plowing, snow

removal, salting, utility repair, asphalt patching, asphalt replacement, concrete repair or replacement and any garbage pickup.

## NOTES



## ARTICLE IV

### ASSOCIATION

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#### **Section 4.1: Organization.**

(a) The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the State of Utah (Utah Code Annotated Titled 16, as amended). The name of the association is "Lost Canyon Estates Home Owners Association, Inc."

(b) The Articles of Incorporation of the Association provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. Such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws (as the same may be amended from time to time) as if they had been drafted to constitute the governing documents of the unincorporated association.

(c) The affairs of the Association shall be governed by a Management Committee as provided in this Declaration and the Bylaws.

#### **Section 4.2: Membership.**

Each Owner during the entire period of Owner's ownership of one or more Lots within the Community shall be a member of

the Association. The membership shall commence, exist and continue by simply virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

#### **Section 4.3: Voting Rights.**

Each Owner shall have one (1) vote in matters of the Association for each Lot owned as set forth in the Bylaws.

#### **Section 4.4: Powers, Duties, and Obligations.**

The Association shall have such powers and duties as may be granted to it or imposed by this Declaration, the Articles of Incorporation, the Bylaws and any applicable statute, as such statute may be amended to expand the scope of association powers, including without limitation:

(a) Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration; the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

(1) The Association shall accept all Owners as members of the Association.

(2) The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.

Such insurance shall include, but it not limited to liability, fidelity and director and officer insurance in such amounts as deemed necessary by the Management Committee.

(3) The Association may employ a responsible corporation, partnership, firm, person or other entity as the managing agent to manage and control the community, subject at all times to direction by the Management Committee, with such administrative functions and powers as shall be delegated to the managing agent by the officers. The compensation of the managing agent shall be such as shall be specified by the officers. Any agreement appointing a managing agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days written notice thereof; and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods. Any managing agent may be an independent contractor and not an agent or employee of the Association.

(b) Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation, this Declaration and any Bylaws, together with its general powers as a corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments and fines as provided in this Declaration. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(1) The Association shall have the power and authority at any time and from time

to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon (including a Residence) if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoy any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Officers, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(2) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Community or in exercising any of its rights to construct, maintain and repair the exteriors of Living Units and/or the landscaping, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon no less than ninety (90) days written notice, the Association shall have the power and authority to pay and discharge any and all liens placed upon any Lot on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and to obtain, contract and pay for, or to otherwise provide for:

(i) Such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as applicable and as the Officers may from time to time deem desirable;

(ii) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Officers may deem desirable;

(iii) Fire, police and such other protection services as the Management Committee may deem desirable for the benefit of the Owners or any of the Property; and

(iv) Such materials, supplies, furniture, equipment, services and labor as the Management Committee may deem necessary.

(3) The Officers may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Officers cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of One Thousand Dollars (\$1,000.00), unless expressly authorized by a duly adopted resolution of the Management Committee.

(4) In addition to the restrictions and requirements in this Declaration, the Management Committee from time to time may, by resolution, adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of the Lots as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property.

Reasonable fines may be levied and collected as an assessment for violations of said rules and regulations.

#### **4.5: Adoption of Bylaws.**

The Association has adopted Bylaws for the Association which are being recorded simultaneously with this Declaration.

### NOTES

## ARTICLE V

### ARCHITECTURAL REVIEW

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#### Section 5.1: *Architectural Review.*

Any plan specifications for the actual house being constructed or addition of an Improvement upon a Lot within the Subdivision by the Owner thereof must be submitted to the Management Committee for approval at least thirty (30) days prior to commencing construction. No Improvement shall be commenced, erected, placed or meaningfully altered on any Lot until the plans, specifications and plot plans showing (1) the location on the Lot and nature of such proposed Improvement, (2) all drives, walkways, patios, barbeques, outbuildings, swimming pools, tennis or other sport courts and similar improvements, the dimensions of all such improvements and distances between the proposed Improvement and the Lot boundaries and other Improvements on the Lot, (3) elevation of sewer as it relates to Residence elevation; (4) finish grading plans; (5) complete set of architectural documents, and (6) complete set of all exterior colors in the form of samples or color chips, with detailed information as to the location of the color and types of all exterior building materials have been submitted to and specifically approved in writing by the Management Committee. In making its determination, the Management Committee may consider such factors as (but not limited to) the quality of workmanship and materials, design, harmony of external design with existing project structures, location with respect to topography and finish grade elevation, preservation and enhancement of the natural beauty of the area and safety. Any subsequent changes, improvements, or alterations in such plans must be submitted to

the Management Committee for written approval. Some or all of the requirements of this Section may be waived by the Management Committee, in the Committee's sole discretion, upon request of the Owner, with respect to the Management Committee's consideration of the approval of the particular Improvement.

The Management Committee may condition such approval on the Lot Owner depositing cash in the sum of Five Thousand Dollars (\$5,000.00) with the Management Committee (the "Deposit"), the purpose of which Deposit shall be further insured that the Lot Owner (1) fulfills his responsibility to keep his Lot in a condition so as to prevent the rubbish and debris which accumulates during the construction and/or landscaping process from blowing or collecting on neighboring Lots, and (2) reasonably cleans up his or her Lot at or near the completion of the construction and/or landscaping process. The Deposit may be required by the Management Committee prior to the commencement of construction by an Owner, or at anytime during the construction period. If the Lot Owner fails in either of these responsibilities, the \$5,000.00 Deposit may be retained by the Management Committee as a fine upon such Lot Owner or as liquidated damages. Additionally, if any such failure is not remedied but the Owner within fourteen (14) days after written notice thereof, the Management Committee may remedy such condition itself and in connection therewith, it may have reasonable access to the Lot and shall charge the Lot Owner for the cost of the remedy, in which event the provisions of Article VII shall be applicable. Upon completion of the construction for the

residence, and the landscaping of the Lot, in a satisfactory manner, the \$5,000.00 Deposit shall be returned to the Lot Owner by the Management Committee.

A Deposit of \$500.00 to be used as a concrete bond and will be accessed at closing and held at a Title Company of the Management Committees choice until which time as Sandy City finds cracks, chips and etc. that need to be repaired the Owner/builder must repair at their own costs. The \$500.00 will be returned to the Owner/builder upon release of the Sandy City bond. If the Management Committee has to repair the problem, the \$500.00 will be used for this repair. The purpose of this deposit is to insure that the Owner/builder take care during construction not to damage the curb, gutter and sidewalk areas.

**Section 5.2: Process of Approval.**

Plans and re-submittal thereof shall be approved, disapproved or otherwise acted upon in writing by the Management Committee within thirty (30) days after their submission to the Management Committee. All plans and specifications and other materials shall be submitted in duplicate. One (1) set shall be returned to the Lot Owner. Any plans and specifications shall be approved or disapproved in writing signed by at least two (2) members of the Management Committee. Failure of the Management Committee to respond to a submittal or re-submittal of plans or materials within thirty (30) days of their submission or re-submission shall be deemed to be an approval of plans as submitted or re-submitted by the Owner.

If, after such plans and specifications have been approved, the Improvements are altered,

erected, or maintained upon the Lot otherwise than as approved by the Management Committee, such alteration, erection and maintenance shall be deemed to have been undertaken without the approval of the Management Committee having been obtained as required by this Declaration. After the expiration of the one (1) year from the date of completion of any Improvement, said Improvement shall, in favor of purchaser and encumbrances in good faith and value, be deemed to comply with all of the provisions hereof unless a notice of such non-compliance or non-completion, executed by two or more member(s) of the Management Committee shall appear of record in the office of the County Recorder, or legal proceeding shall have been instituted to enforce compliance with these provisions. The approval of the Management Committee of any plans or specifications submitted for approval as herein specified for use on any Lot and/or Residence shall not be deemed to be a waiver by the Management Committee of its right to object to any of the features or elements embodied in such plans and specifications, if or when the same features or elements are embodied in any subsequent plans and specifications submitted for approval as herein provided for use on other Lots or Residences. Upon approval of the Management Committee acting in accordance with the provision of this Declaration, it shall be conclusively presumed that the location and size of any improvement does not violate the provisions of this Declaration.

**NOTES**

## ARTICLE VI

### *EASEMENTS, HILLSIDE DISTURBANCE AND FLOOD CONTROL*

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#### **Section 6.1: *Utility Easements.***

Easements for installations and maintenance of drainage facilities and public utilities are generally reserved over ten (10) feet of the front, rear and one side of each Lot, and as otherwise identified on the Map of the Subdivision. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. However, the Management Committee may approve a structure within the easements such as a fence, wall, landscaping, driveway or off-street parking area. It is expressly understood, however, that any such Improvement shall be constructed at the Owner's or the easement holder's sole risk, as the case may be, and as provided in the easement document(s), of having the Improvement partially or wholly removed, dismantled, taken out, or destroyed where necessary because of drainage or public utility servicing, installation, alteration or maintenance. The easement areas within each Lot and all Improvements in such areas shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible to maintain.

#### **Section 6.2: *Grading Approval.***

All persons erecting or constructing improvements on any Lot shall first submit plans to the Management Committee for review and approval and second comply with the Sandy City Hillside Ordinance requiring, among other things, that grading and vegetation plans be approved by the Sandy

City Engineer before building permits are issued. That vegetation removal be kept to a minimum during all phases of construction. No disturbance of any 30% hillside/slope will be allowed unless approved in writing by Sandy City. Grading and home placement plans must be submitted for lots 17-26 and 28-33 at the time building permits are applied for. The grading plan shall include a driveway profile to assure conforming driveway slope.

#### **Section 6.3: *Flood Control Responsibility.***

Individual Lot Owners are to be responsible for the storm water their lot(s) generate. In no way should on-site water impact surrounding properties. Construction of berms, channels or other flood control facilities is the sole responsibility of the Lot Owner and shall be done in accordance with the flood control district plans approved by Sandy City. Such construction shall commence at the time the Lot is graded or otherwise altered from its natural state.

#### **Section 6.4: *Lot 19 - Natural Drainage Area.***

As designated on the Map, there is a drainage easement on Lot 19. An open channel will be constructed in this easement. Care must be taken in construction upon Lot 19 to leave this open channel free from obstruction.

## NOTES

## ARTICLE VII

### ASSESSMENTS

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#### **Section 7.1: *Covenant for Assessment.***

(a) Each Owner, by acceptance of a deed hereafter conveying any such Lot to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments:

(1) Annual assessments (the "Annual Assessment") as provided in Section 7.2 below.

(2) Special assessments ("Special Assessments") as provided in Section 7.5 below.

(3) Emergency assessments ("Emergency Assessments") as provided in 7.6 below.

(4) Individual assessments ("Individual Assessments") as provided in Section 7.7 below.

(b) Assessments shall be established and collected as provided in this article.

(c) No Owner may exempt itself from liability for Assessments by abandonment of any Lot owned by such Owner.

#### **Section 7.2: *Annual Budget and Assessment.***

(a) Annual Budget. The Management Committee shall prepare, or cause the preparation of, an annual budget for the Association, which shall provide, without limitation, for the maintenance of the

landscaping and exteriors of Residences and for the administration, management and operation of the Association. If Management Committee fails to adopt an annual budget, the last adopted budget shall continue in effect.

#### (b) Determination of Annual Assessment.

(1) The Management Committee of the Association shall fix the amount of the annual assessment ("Annual Assessment") against each Lot for each assessment period at least thirty (30) days in advance of the beginning of the period. Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning any assessment period.

(2) The omission by the Management Committee, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.

#### **Section 7.3: *Apportionment of Assessments.***

Assessments shall be apportioned as follows:

(a) Annual, Special and Emergency Assessments. All Lots shall pay their pro rata share of the Annual Assessment, Special Assessments and Emergency Assessments commencing upon the date the Lots are made subject to this Declaration. The pro rata share shall be based upon the total amount of each such assessment divided by the total number of Lots.

(b) Individual Assessments. Individual Assessments shall be apportioned exclusively against the Lots benefitted or to which the expenses are attributable as provided in Section 7.7.

(c) Payment of Assessments. Upon resolution of the Management Committee, installments of Annual Assessments may be levied and collected on a quarterly, semi-annual or annual basis rather than on the monthly basis. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty.

**Section 7.4: Personal Obligation and Costs of Collection.**

(a) Assessments imposed under this Declaration, together with interest at a rate to be established by resolution of the Management Committee, not to exceed the maximum permitted by law, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof, shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment became due.

(b) The personal obligation for any delinquent Assessment, together with interest, costs and reasonable attorneys' fees, however,

shall not pass to the Owner's successor or successors in title unless expressly assumed by such successor or successors.

**Section 7.5: Special Assessments.**

In addition to the Annual Assessments authorized in this Article, the Association may levy in any assessment year, a special assessment ("Special Assessment"), applicable for that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the exterior of the living units or the landscaping; provided that such assessment shall first be approved by a majority of the votes of members of the Association, voting in person or by proxy, at a meeting duly called for such purpose.

**Section 7.6: Emergency Assessment.**

(a) If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Management Committee shall, as soon as practicable, determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and levies the additional assessment ("Emergency Assessment"). The resolution shall specify the reason for the Emergency Assessment.

(b) Any Emergency Assessment in the aggregate in any fiscal year would exceed an amount equal to ten percent (10%) of the budgeted expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the Owners voting in person or by proxy, at a meeting duly called



for such purpose.

(c) Emergency Assessments shall be apportioned as provided in Section 7.3 above.

**Section 7.7: Individual Assessments.**

(a) Any expenses benefitting or attributable to fewer than all of the Lots may be assessed exclusively against the Lots affected or benefitted ("Individual Assessment"). Individual Assessments shall include, but are not limited to:

(1) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with the provisions of this Declaration or rules and regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation of this Declaration, the Bylaws or any rules and regulations of the Association.

(2) Any reasonable services provided to an unimproved or vacant Lot by the Association due to an Owner's failure to maintain the same in order to protect the health, safety and welfare of adjoining Lot owners and the Association in general.

**Section 7.8: Nonpayment of Assessments.**

Any assessment or portion thereof not paid within thirty (30) days after the due date (which shall be established by resolution of the Management Committee):

(a) Shall be delinquent and shall bear interest from the date of delinquency at the rate, established by resolution of the Management Committee, not to exceed the maximum rate permitted by law, and

(b) Shall be subject to a late charge of Ten Dollars (\$10.00) per month until paid, or ten percent (10%) of the assessment, whichever is greater; and

(c) If paid by installments, may, in the discretion of the Management Committee, be accelerated (including interest as provided for above) and the entire balance declared due and payable upon not less than ten (10) days' written notice to the Owner.

**Section 7.9: Lien for Assessments.**

All Assessments imposed shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article VII and shall be construed as a real covenant running with the land.

**Section 7.10: Subordination of Lien to Mortgages.**

(a) The lien of the Assessments provided for in this article shall be subordinate to the lien of any first mortgages or deeds of trust now or hereafter placed upon the Lot subject to assessment, except as provided in subsection (b) of this section.

(b) The sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability for any Assessments thereafter becoming due, nor from the lien of any future assessment.

**Section 7.11: *Enforcement of Lien.***

**NOTES**

The Association may establish and enforce the lien for any Assessment, including Annual, Special, Individual or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which the Assessment is made. The lien may be established and enforced for damages, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for in this Declaration or by law or awarded by a court for breach of any provisions of this Declaration, the Bylaws or any rules and regulations of the Association. The lien may be foreclosed in the same manner as either deeds of trust, mortgages, or in any other manner permitted by Utah law. The collection remedies stated herein are cumulative and the use of one does not preclude the use of other remedies.

**Section 7.12: *Suspension of Voting Rights.***

The Management Committee shall have the right to suspend any Owner's right to vote during any period of time that the Owner carries a past due assessment balance.

## ARTICLE VIII

### ASSOCIATION AND OWNER MAINTENANCE OBLIGATION

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#### Section 8.1: *Common Area.*

The Association shall improve, develop, supervise, manage, operate, examine, insure, inspect, care for, repair, replace, restore and maintain the Common Area.

shall be levied and collected in the same manner as assessments pursuant to this Declaration and the Bylaws.

#### NOTES

#### Section 8.2: *Lots.*

(a) Owner's Responsibility. All maintenance of the Lots and all structures, landscaping and areas from the curb line to the rear property line, and all other Improvements thereon, shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in accordance with the community wide standards of the Association, said standard to be adopted by the Management Committee as deemed necessary. Without limiting the Committee's authority to promulgate standards, an Owner's maintenance responsibility shall include insect and weed abatement.

(b) Maintenance by Association. The Management Committee may assume the maintenance responsibility over a Lot if, in the opinion of the Management Committee, the Owner is unwilling or unable to adequately provide such maintenance. Before assuming such maintenance responsibility, the Management Committee shall give notice to the Owner of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action with thirty (30) days after mailing of such written notice, then the Association may proceed to maintain the Lot. The expenses of such maintenance incurred by the Association shall be reimbursed to the Association by the Owner. Such expenses

## ARTICLE IX

### *VIOLATIONS AND POWERS OF ENFORCEMENT*

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#### **Section 9.1: *The Association's Powers of Enforcement.***

Enforcement shall be accomplished by any lawful means, including an action at law or in equity against any person or persons violating or attempting to violate any provision herein, either to restrain violation or recover damages. In the event a legal action is instituted by the Association to enforce compliance with or due to a breach of any of the provisions of this Declaration, the party found to have violated any provision(s) of this Declaration shall be liable to the prevailing party for the prevailing party's legal costs and expenses, including reasonable attorney's fee. Notwithstanding the foregoing, no liability of any nature at all shall attach to the Association, or any member thereof, in acting in good faith pursuant to the provisions of this Declaration.

If after fourteen (14) days written notice, an Owner fails to remedy a violation (the "Defaulting Lot Owner"), the Association may (in addition to other lawful remedies available to it) cause such violation or condition to be remedied and the cost thereof shall be charged to the Defaulting Lot Owner in which event such costs shall be deemed an Individual Assessment to such Defaulting Lot Owner and shall attach as a lien to the Defaulting Lot Owner's Lot, and shall be subject to levy, enforcement and collection by the Association, in accordance with the assessment lien procedure provided for in this Declaration.

Failure to comply with any of the provisions of this Declaration, Bylaws or rules and regulations adopted pursuant thereto shall be

grounds for relief which may include, without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof, which relief may be sought and liberally construed to effectuate its purpose. Any violation of this Declaration shall be deemed to be a nuisance or unreasonable annoyance. Failure to enforce any provisions hereof shall not constitute a waiver of the right to enforce said provisions hereof.

#### **Section 9.2: *Fines.***

The Management Committee shall have the right to levy a reasonable fine, pursuant to a schedule of fines as established by Management Committee resolution, against any Lot or Owner for violations of this Declaration, the Bylaws, and/or rules and regulations. Any fine levied against an Owner shall become the personal obligation of the Owner and shall also become a lien against the Lot. Fines shall be collectable and enforced in the same manner as Assessments.

#### **Section 9.3: *Enforcement by Others.***

Additionally and after reasonable notice in writing, an Owner not at the time in default hereunder, or the Association shall have the option of bringing an action for damages, specific performance, or injunctive relief against any defaulting Owner, and in addition may sue to have enjoined any violation of this Declaration. Any judgment shall include an award of the legal costs and expenses, including a reasonable attorney's fee, entered against the losing party and in favor of the prevailing party.

**Section 9.4: *Rights of Entry.***

NOTES

The Association shall have a limited right of entry in and upon all Lots and the exterior of all Residences for the purpose of taking whatever corrective action it deems necessary or proper. Nothing in this Section or Article shall in any manner limit the right of the Owner to exclusive control over the interior of their Residence.

**Section 9.5: *Management Committee Authority.***

The Management Committee shall have the right to enforce any applicable provision hereof in the same manner provided to the Association.

**Section 9.6: *Enforcement Remedies Cumulative.***

Each remedy provided in this Declaration shall be cumulative and not exclusive or exhaustive. Suit to recover a money judgment may be maintained without foreclosure or waiving the lien securing the same.

## ARTICLE X

### INSURANCE

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#### **Section 10.1: *Types of Insurance Maintained by the Association.***

The Association shall obtain the following types of insurance:

- (a) Insurance on all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief in an amount sufficient to cover the full replacement cost of such improvements in the event of damage or destruction;
- (b) A public liability insurance policy covering the Association, its officers, directors and managing agents, having at least a Five Hundred Thousand Dollar (\$500,000.00) limit per total claims that arise from the same occurrence, including but not limited to liability insurance for the recreational facilities located in the Community, or in an amount not less than the minimum amount required by applicable law, ordinance or regulation;
- (c) Workers' compensation insurance, if and to the extent required by law; and
- (d) Fidelity bond or bonds covering all Directors, officers, employees and other persons handling or responsible for the funds of the Association, in such amounts as the Management Committee deems appropriate.

#### **Section 10.2: *Premiums for Insurance Maintained by Association.***

Premiums for all insurance and bonds required to be carried under Section 10.1 hereof or otherwise obtained by the Association on the Common Area shall be an expense of the Association, and shall be included in the Annual Assessments. Premiums on any fidelity bond maintained by a third party manager shall not be an expense of the Association. Said assessment, however, shall take into consider the insurance needs for the Lots and shall be calculated accordingly.

#### **Section 10.3: *Damage and Destruction of Common Area.***

- (a) Immediately after any damage or destruction by fire or other casualty to all or any part of the insurable improvements on the Common Area, the Management Committee, or its agent, shall proceed with the filing and adjustment of all claims arising under the fire and extended coverage insurance maintained by the Association and obtain reliable estimates of the cost of repair or reconstruction of the damaged or destroyed improvements. Repair or reconstruction means repairing or restoring the improvements to substantially the same condition in which they existed prior to the fire or other casualty.
- (b) Any damage or destruction to insurable improvements on the Common Area shall be repaired or reconstructed unless at least seventy-five percent (75%) of the members present at a meeting of the membership held within ninety (90) days

after the casualty shall decide not to repair or reconstruct.

(c) If, in accordance with Subsection (b) of this section, the improvements are not to be repaired or reconstructed and no alternative improvements are authorized by the members, then and in that event the damaged Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. In such event, any excess insurance proceeds shall be paid over to the Association for the benefit of the Property, which proceeds may be used and/or distributed as determined by the Management Committee, in its discretion, or as otherwise provided in the Articles of Incorporation and/or the Bylaws of the Association.

**Section 10.4: *Repair and Reconstruction of Common Area.***

If any improvements on the Common Area are damaged or destroyed, and the proceeds of insurance received by the Association are not sufficient to pay in full the cost of the repair and reconstruction of the improvements, the Management Committee shall, without the necessity of a vote of the members, levy a Special Assessment against all Owners in order to cover the deficiency in the manner provided in this Declaration. If the proceeds of insurance exceed the cost of repair, such excess shall be retained by the Association and used for such purposes as the Management Committee shall determine.

**Section 10.5: *Hazard Insurance on Improved Lots.***

Each Owner of an improved Lot at all times shall maintain fire and extended coverage insurance or other appropriate damage and physical loss insurance, in an amount equal to not less than one hundred percent (100%) of the current replacement value of the improvements on the Lot.

**Section 10.6: *Obligation of Lot Owner to Repair and Restore.***

(a) In the event of any damage or destruction of the improvements on a Lot, the insurance proceeds from any insurance policy on an improved Lot, unless retained by a Mortgagee of a Lot, shall be applied first to the repair, restoration or replacement of the damaged or destroyed improvements. Any such repair, restoration or replacement shall be done in accordance with the plans and specifications for such improvements originally approved by the Management Committee; unless the Owner desires to construct improvements differing from those so approved, in which event the Owner shall submit plans and specifications for the improvements to the Management Committee and obtain its approval prior to commencing the repair, restoration or replacement.

(b) If any Owner of an improved Lot fails to maintain the insurance required by this Declaration, the Association may, but shall not be obligated to, obtain such insurance and pay any premiums required in connection with obtaining such insurance. Such Owner shall be personally liable to the Association for any costs incurred by the Association in obtaining such insurance, to the same extent as such Owner is liable for

assessments levied against its Lot, and, upon the failure of the Owner to pay such costs within ten (10) days after such Owner's receipt of a written demand therefor from the Association, the Association may establish a lien therefor upon the Owner's Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

## NOTES



# ARTICLE XI

## *DURATION AND AMENDMENT*

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### **Section 11.1: *Duration.***

NOTES

This Declaration shall continue in full force and effect for a period of fifty (50) years from the date hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a declaration of termination is recorded with the County Recorder of Salt Lake County, meeting the requirements of an amendment to the Declaration as set forth in Section 11.2 of this Article. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Lot from membership on the Association as long as this Declaration shall continue in full force and effect.

### **Section 11.2: *Amendment.***

Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association either in writing or at a duly called meeting for such purpose.

No amendment to this Declaration shall be effective unless the Management Committee certifies that the amendment was affirmatively approved by the Owners of a majority of the Lots in the Subdivision at the time of such amendment.

## ARTICLE XII

### MISCELLANEOUS

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#### **Section 12.1: Severability.**

Invalidation of any one of these covenants, or any portion thereof by judgment or court order shall in no way effect any of the other provisions which shall remain in full force and effect.

#### **Section 12.2: Singular Includes Plural.**

Whenever the context of the Declarant requires the same, the singular shall include the plural, and the masculine shall include the feminine.

#### **Section 12.3: Covenants, Etc. Shall Run with the Land.**

All of the limitations, restriction, easements, conditions and covenants herein shall run with the land and shall be binding in and for the benefit of all the Property and all parties having or acquiring any right, title or interest in the Property and any part thereof and shall insure to the benefit of each owner and are imposed upon the Property as a servitude in favor of each parcel thereof as the dominant tenement or tenements.

#### **Section 12.4: Limitation on Liability.**

Neither the Declarant, its assignee, delegatee, the Management Committee or the Association shall be liable to any other person for action or failure to act hereunder where such action or failure was in good faith.

#### **Section 12.5: Wildlife Area.**

The Property encompasses a wildlife area. Owners should expect that wildlife will be in the area and possibly on their own Lot.

#### **Section 12.6: Paragraph Headings.**

The headings which precede the paragraphs and sub-paragraphs of this Declaration are for convenience only and in no way affect the manner in which any provision hereof is construed.

#### **Section 12.7: Foreclosure.**

Should any Mortgage be foreclosed on the Property, then the title acquired by such foreclosure and the person or persons who thereupon and thereafter become the owner or owners of such Property, shall be subject to and bound by all the restrictions enumerated herein.

#### **Section 12.8: Effective Date.**

This Declaration and any amendment(s) or supplemental(s) thereto shall take effect upon its (their) being filed for record in the Office of the County Recorder of Salt Lake County, Utah.

#### **Section 12.9: Waiver of Sidewalk.**

A requirement for sidewalk on front of Lots \_\_\_\_\_ of the Subdivision has been waived by Sandy City because of the desire to preserve the natural beauty of the area, the rural atmosphere and as much vegetation as possible.

NOTES

IN WITNESS WHEREOF, the President and Secretary of the Association hereby execute this instrument the day and year first hereinabove written and certify that a majority of Lot owners have affirmatively approved this Amended and Restated Declaration.

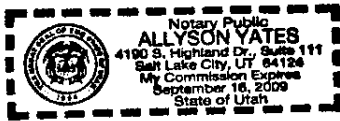
LOST CANYON ESTATES HOME OWNERS  
ASSOCIATION, INC.

*Clark T. Parkinson*  
By: Clark T. Parkinson  
Its President

*Kelly Jensen*  
By: Kelly Jensen  
Its Secretary

STATE OF UTAH                    )  
                                                  ) ss.  
COUNTY OF SALT LAKE        )

On the 31 day of July, 2006, \_\_\_\_\_ personally appeared before me CLARK T. PARKINSON and KELLY JENSEN, who being by me duly sworn did that say that they are the President and Secretary of the Association and that the seal affixed to the foregoing instrument is the seal of said Association and that said instrument was signed and sealed in behalf of said Association by authority of its Management Committee; and each of them acknowledged said instrument to be their voluntary act and deed.



*Allyson Yates*  
Notary Public

## EXHIBIT A

### LEGAL DESCRIPTION

*Beginning at point 1571.19 feet South 0 degrees 05 minutes 38 seconds West along the quarter section line from the North quarter corner of Section 23, Township 3 South, Range 1 East, Salt Lake Base and Meridian; thence West 204.07 feet; thence Northerly 45.33 feet; along a curve to the left, Delta Angle of 1 degree 24 minutes 56 seconds, radius of 1801.55 feet, (chord bears North 12 degrees 18 minutes 51 seconds East 44.51 feet); thence North 13 degrees 01 minutes 27 seconds East 588.978 feet; thence Northeasterly 363.821 feet; along a curve to the left, Delta Angle of 36 degrees 50 minutes 28 seconds, radius of 565.815; (chord bears North 31 degrees 26 minutes 56 seconds East 357.583 feet), thence South 73 degrees 19 minutes 34 seconds East 375.377 feet; thence North 40 degrees 24 minutes 03 seconds East 151.93 feet; thence North 61 degrees 14 minutes 35 seconds East 162.44 feet; thence North 81 degrees 36 minutes 47 seconds East 317.91 feet, thence North 74 degrees 12 minutes 43 seconds East 124.95 feet; thence North 54 degrees 12 minutes 57 seconds East 137.04 feet; thence North 53 degrees 00 minutes 54 seconds East 72.52 feet; thence South 1291.27 feet; thence West 216.20 feet; thence South 36 degrees 42 minutes 30 seconds West 240.00 feet; thence West 100.00 feet; thence South 39 degrees 330 minutes 57 seconds West 759.467 feet; thence North 89 degrees .54 minutes 22 seconds West 387.20 feet; thence North 0 degree 05 minutes 38 seconds East 855.07 feet to the point of beginning.*

28-23-203-005

**EXHIBIT B**

**BYLAWS OF  
LOST CANYON ESTATES  
HOME OWNERS ASSOCIATION, INC.**

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## ARTICLE I

### *PLAN OF LOT OWNERSHIP*

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#### **Section 1.1: *Name and Location.***

These are the Bylaws of LOST CANYON ESTATES HOME OWNERS ASSOCIATION, INC. (the "Association"). Lost Canyon Estates is community of owners that has been subjected to an AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LOST CANYON ESTATES SUBDIVISION recorded in the Recorder's Office of Salt Lake County, Utah (the "Declaration"). These Bylaws are applicable to all real property described in the Declaration and any supplements or amendments thereto (the "Property").

#### **Section 1.2: *Principal Office.***

The principal office of the Association shall be located at \_\_\_\_\_, Utah 84\_\_\_\_ or such other office as may designated by the Management Committee from time to time.

#### **Section 1.3: *Purposes.***

This Association is formed to serve as a means through which the Lot Owners may take action with regard to the administration, management and operation of the Lost Canyon Estates Subdivision.

#### **Section 1.4: *Applicability of Bylaws.***

The Association, all Lot Owners and all persons using the Property shall be subject to these Bylaws and to all rules and regulations which may be adopted pursuant to the Declaration and these Bylaws.

#### **Section 1.5: *Composition of Association.***

The Association shall be composed of all Lot Owners, and the Association, itself, to the extent it owns any Lot or Lots of the Property.

#### **Section 1.6: *Incorporation of Association.***

(a) The Association shall be incorporated under the Utah Revised Nonprofit Corporation Act. The Articles of Incorporation of the Association shall be consistent with the Declaration and these Bylaws, and these Bylaws shall constitute the Bylaws of the incorporated association. The name of the association shall be "LOST CANYON ESTATES HOME OWNERS ASSOCIATION, INC."

(b) In the event the incorporated Association shall at any time be dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event, all of the property, powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, which vesting shall thereafter be confirmed and evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any such successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the incorporated association as if they had been made to constitute the governing documents of the unincorporated association.

## NOTES

### **Section 1.7: *Definitions.***

The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.

### **Section 1.8: *Membership.***

All Owners shall be members of the Association. Owners and members is used interchangeably in and shall mean the same thing.

## ARTICLE II

### MEETING OF ASSOCIATION

---

#### **Section 2.1: *Place of Meeting.***

The Association shall hold meetings at such suitable place convenient to the Owners as may be designated by the Management Committee from time to time.

#### **Section 2.2: *Annual Meetings.***

The date of the annual meeting of the members shall be determined by the Management Committee, not to exceed one (1) year from the date of incorporation, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at a time and place within the State of Utah selected by the Management Committee of the Association. If the annual meeting of the members is a legal holiday or weekend, the meeting will be held on the first day following which is not a legal holiday or weekend.

#### **Section 2.3: *Special Meetings.***

Special meetings of the members may be called at any time by the president or by the Management Committee, or upon written request of the at least thirty percent (30%) of the members stating the purpose of the meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice.

#### **Section 2.4: *Notice of Meetings.***

Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days but

not more than sixty (60) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. The notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

#### **Section 2.5: *Voting.***

Each Lot shall be allocated one vote in the affairs of the Association as provided in the Declaration. The Management Committee shall be entitled to vote on behalf of any Lot which has been acquired by or on behalf of the Association, except the Management Committee shall not be entitled to vote such Lots in any election of Management Committee Members.

#### **Section 2.6: *Proxies, Absentee Ballots and Rights of Mortgagees.***

##### (a) Proxies

(1) A vote may be cast in person or by proxy. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated and signed by such Owner and shall be filed with the secretary in accordance with procedures adopted by resolution of the Management Committee.

(2) No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than

eleven (11) months after the date of execution.

(3) No proxy shall be valid if it purports to be revocable without notice.

(4) An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association or to the Management Committee if a vote is being conducted by written ballot in lieu of a meeting pursuant to Section 2.12 below.

(5) Every proxy shall automatically cease upon sale of the Lot.

(b) Absentee Ballots. At the discretion of the Management Committee, a vote may be cast by absentee ballot.

(c) Mortgage Rights.

(1) An Owner may pledge or assign the owner's voting rights to a Mortgagee. In such a case, the Mortgagee or its designated representative shall be entitled to receive all notices to which the owner is entitled hereunder and to exercise the owner's voting rights from and after the time that the Mortgagee shall have given written notice of the pledge or assignment to the Management Committee.

(2) Any first Mortgagee may designate a representative to attend all or any meetings of the Association.

#### **Section 2.7: *Fiduciaries and Joint Owners.***

(a) Fiduciaries. An executor, administrator, guardian, or trustee may vote in person or by proxy, at any meeting of the Association with respect to any Lot owned or held in such capacity, whether or not the same shall have

been transferred to his or her name; provided, that the person shall satisfy to the secretary that he is the executor, administrator, guardian, or trustee holding the Lot in such capacity.

(b) Joint Owners. Whenever any Lot is owned by two or more persons jointly, according to the records of the Association, the vote of the Lot may be exercised by any one of the Owners then present, in the absence of protest by a co-owner. In the event of a protest, no one co-owner shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners, the vote of the Lot shall be disregarded completely in determining the proportion of votes given with respect to the matter.

#### **Section 2.8: *Quorum of Owners.***

(a) Except as otherwise provided in the Declaration or these Bylaws, at any meeting of the Association, Owners holding thirty percent (30%) of the voting rights, present in person or by proxy, or absentee ballot if permitted under Section 2.6(b) above, shall constitute a quorum.

(b) The subsequent ratification of an Owner, in the action taken at a meeting shall constitute the presence of the person for the purpose of determining a quorum. When a quorum is once present to organize a meeting it cannot be broken by the subsequent withdrawal of an Owner or Owners.

(c) If any meeting of members cannot be organized because of a lack of quorum, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present. For each adjourned meeting, the quorum requirement

shall be reduced to the number of members present at the adjourned meeting. The adjournment provisions of this subsection (c) do not apply to action by written ballot in lieu of a meeting under Section 2.12 below.

**Section 2.9: *Binding Vote.***

The vote of the holders of more than fifty percent (50%) of the voting rights present, in person, by proxy, or absentee ballot if permitted under Section 2.6(b) above, at a meeting at which a quorum is present shall be binding upon all members for all purposes except where a higher percentage vote is required by law, the Declaration, or these Bylaws.

**Section 2.10: *Order of Business.***

The order of business at annual meetings of the Association shall be:

- (a) Calling of the roll and certifying of proxies;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of committees, if any;
- (f) Election of Management Committee Members;
- (g) Unfinished business;
- (h) New business; and
- (i) Adjournment.

**Section 2.11: *Meeting Procedure.***

Unless other rules of order are adopted by resolution of the Management Committee:

(a) Meeting of the Association shall be conducted according to the latest edition of Robert's Rules of Order published by the Robert's Rules Association.

(b) A decision of the Association may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied.

(c) A decision of the Association is deemed valid without regard to procedural errors related to the rules of order one year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

**Section 2.12: *Action By Written Ballot In Lieu of a Meeting.***

(a) Action By Written Ballot. At the discretion of the Management Committee, any action, except election or removal of Management Committee Members, that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every Owner that is entitled to vote on the matter not less than twenty (20) days prior to the date on which the ballots must be received by the Association in order to be counted.

(b) Form and Effect of Ballot

(1) The written ballot must set forth each proposed action and provide an

opportunity to vote for or against each proposed action.

- (2) A written ballot may not be revoked.

(c) Information Required in Ballot Solicitations. All solicitations for votes by written ballot must:

- (1) State the number of responses needed to meet any applicable quorum requirements and the total percentage of votes needed for approval.

- (2) Specify the period during which the Association will accept written ballots for counting, which period shall end on the earliest of the following unless the vote is pursuant to the secrecy procedure described in Subsection (d) of this section:

- (i) The date on which the Association has received a sufficient number of approving ballots to pass the proposal;

- (ii) The date on which the Association has received a sufficient number of disapproving ballots to render the proposal impossible of passage; or

- (iii) A date certain on which all ballots must be returned to be counted.

(d) Secrecy Procedure. The Management Committee may elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by:

- (1) A secrecy envelope;

- (2) A return identification envelope to be signed by the owner; and

- (3) Instructions for marking and returning the ballot.

(e) Determination of Vote. The outcome of a vote by written ballot in lieu of a meeting shall be determined by the Management Committee within forty-eight (48) hours of the deadline for return of ballots, or in the event the ballot return date is postponed, within forty-eight (48) hours of the postponed date. Matters that may be voted on by written ballot shall be deemed approved or rejected as follows:

- (1) If approval of a proposed action would otherwise require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal will be deemed to be approved when the date for return of ballots has passed, a quorum of owners has voted and the required percentage of approving votes has been received. Otherwise, the proposal shall be deemed to be rejected.

- (2) If approval of a proposed action otherwise would require a meeting at which a specified percentage of owners must authorize the action, the proposal shall be deemed to be approved when the percentage of total votes cast in favor of the proposal equals or exceeds such required percentage. The proposal shall be deemed to be rejected when the number of votes cast in opposition renders approval impossible or when both the date for return of ballots has passed and such required percentage has not been met.

- (3) Except as provided in Subsection (e)(4) of this section, votes may be

counted from time to time before the final return date to determine whether the proposal has passed or failed by the votes already cast on the date they are entered.

(4) Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

(f) Owner Notification of Ballot Results. Each Owner shall be notified within ten (10) days after the ballots have been counted, by mail or other delivery of written notice, of the results of the ballot meeting or that a quorum of ballots was not returned.

**Section 2.13: *Action Without a Meeting.***

(a) Any action that may be taken at any annual, regular or special meeting of the Association, may be taken without a meeting and without solicitation of written ballots pursuant to Section 2.12 above, if the action is taken by all of the owners entitled to vote on the action.

(b) The action must be evidenced by one or more written consents describing the action taken, signed by all of the owners entitled to vote on the action, and delivered to the Association for inclusion in the minutes or filing with the Association records.

(c) Action taken under this section is effective when the last owner signs the consent, unless the consent specifies an earlier or later effective date. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.



## ARTICLE III

### *MANAGEMENT COMMITTEE; SELECTION; TERM OF OFFICE*

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#### **Section 3.1: *Number and Qualification.***

(a) The affairs of the Association shall be governed by a Management Committee composed of three (3) members elected as provided in Section 3.2 below.

(b) All Management Committee Members must be an Owner or the co-owner of a Lot. However, multiple owners of the same Lot may not serve as Management Committee Members simultaneously. An officer or employee of a corporation, a partner of a partnership, a trustee of a trust, a personal representative of an estate or an employee of a trust or estate, may serve on the Management Committee if the corporation, partnership, trust or estate owns a Lot.

#### **Section 3.2: *Election and Term of Office.***

(a) Nomination to the Management Committee and election shall be as specified in Article IV below.

(b) All Management Committee Members shall hold office until their respective successors shall have been elected by the members.

(c) Management Committee Members' terms shall be staggered. At the 2006 annual members' meeting, three (3) committee members shall be elected. One for a one (1) year term; another for a two (2) year term, and the final member is to be elected for a three (3) year term. The initial term of each member (1, 2, or 3 years) shall be decided by vote of the newly elected committee members at their first meeting. Upon the natural

expiration of a committee member's term, a successor shall be elected for a three (3) term. There shall be no limit on the number of terms an Owner may serve as a committee member.

#### **Section 3.3: *Vacancies.***

Vacancies on the Management Committee, caused by any reason other than the removal of a Management Committee Member by a vote of the Association, shall be filled for the balance of the term of each Management Committee Membership by vote of a majority of the remaining Management Committee Members even though they may constitute less than a quorum. Each person so elected shall be a Management Committee Member until a successor is elected upon expiration of the term for which the person was elected by the other Management Committee Members to serve.

#### **Section 3.4: *Removal of Management Committee Members.***

(a) At any annual or special meeting, other than a meeting by written ballot conducted pursuant to Section 2.12 above, any one or more of the Management Committee Members, other than interim Management Committee Members, may be removed, with or without cause, by a majority of all Lot Owners, whether present in person or by proxy, at a duly constituted meeting. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any Management Committee Member whose removal has been proposed by the owners may be given an

opportunity to be heard at the meeting.

NOTES

(b) The Management Committee, pursuant to Section 6.2(c) below, may declare the office of a member of the Management Committee to be vacant in the event such member is absent from three (3) consecutive regular meetings of the Management Committee. The vacancy shall be filled as provided in Section 3.3 above.

**Section 3.5: *Compensation.***

No Management Committee Member shall receive compensation for any service he or she may render to the Association. However, any Management Committee Member may be reimbursed for actual expenses incurred in the performance of his or her duties.

## ARTICLE IV

### *NOMINATION AND ELECTION OF MANAGEMENT COMMITTEE MEMBERS*

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#### **Section 4.1: *Nomination.***

#### NOTES

(a) Method of Nomination. Nomination for election to the Management Committee, including action under Section 3.2 above, shall be made by the Management Committee. Nominations may also be made from the floor at the annual meeting or any special meeting held pursuant to Section 3.4 above. The Management Committee shall make as many nominations for election to the Management Committee as it shall in its discretion determine, but not less than the number of vacancies

#### **Section 4.2: *Election.***

Election to the Management Committee shall be by secret written ballot. At the election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE V

### *MEETINGS OF MANAGEMENT COMMITTEE*

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#### **Section 5.1: Regular Meetings.**

Regular meetings of the Management Committee shall be held at least quarterly, at such place and hour as may be fixed from time to time by resolution of the Management Committee. Should the meeting fall upon a legal holiday or weekend, then that meeting shall be held at the same time on the next day which is not a legal holiday or weekend.

(a) Procedure and Business. Until the election of new officers, the meeting shall be chaired by the outgoing president, or in the absence of such person, the outgoing secretary, regardless of whether the outgoing president or secretary is as member of the newly constituted Management Committee.

#### **Section 5.2: Special Meetings.**

Special meetings of the Management Committee shall be held when called by the president of the Association, or by any two (2) Management Committee Members, after not less than three (3) days notice to each Management Committee Member by mail, including electronic mail if approved by the Management Committee, telephone, or telegraph. The notice must state the time, place, and purpose of the meeting.

#### **Section 5.3: Meeting Procedure.**

Unless other rules of order are adopted by resolution of the Management Committee:

(a) Meeting of the Management Committee shall be conducted according to the last edition of Robert's Rules of Order published by the Robert's Rules Association.

(b) A decision of the Management Committee may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied.

(c) A decision of the Management Committee is deemed valid without regard to procedural errors related to the rules of order one year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

#### **Section 5.4: Open Meetings; Executive Sessions.**

(a) Open Meetings. Except as provided in Subsection (b) of this section, all meetings of the Management Committee shall be open to Lot Owners. However, no Owner shall have a right to participate in the Management Committee meeting unless the Owner is also a member of the Management Committee. The president shall have the authority to exclude an Owner who disrupts the proceedings at a Management Committee meeting.

(b) Executive Sessions. In the discretion of the Management Committee, the following matters may be considered in executive session:

(1) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters;

(2) Personnel matters, including

salary negotiations and employee discipline;

(3) The negotiation of contracts with third parties; or

(4) Collection of unpaid assessments.

(c) Executive Session Procedure.

(1) Except in the case of an emergency, the Management Committee shall vote in an open meeting whether to meet in executive session. If the Management Committee votes to meeting in executive session, the president or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

(2) A contract or an action considered in executive session does not become effective unless the Management Committee, following the executive session, reconvenes in open meeting and votes on the contract or action, which must be reasonably identified in the open meeting and included in the minutes.

**Section 5.5: Meetings by Telephonic or Electronic Communication.**

In the event of an emergency, meetings of the Management Committee may be conducted by telephonic communication or by the use of a means of communication that allows all members of the Management Committee participating to hear each other simultaneously or otherwise to be able to

communicate during the meeting.

**Section 5.6: Action Taken Without a Meeting.**

In the case of any emergency, the Management Committee Members shall have the right to take any action in the absence of a meeting which they could take a regular or special meeting by obtaining the written approval of all the Management Committee Members in accordance with U.C.A. 16-6a-813. Any action so approved shall have the same effect as though taken at a meeting of the Management Committee Members

**Section 5.7: Notice to Owners of Meetings of Management Committee.**

For other than emergency meetings, notice of each Management Committee meeting must be posted at a place or places on the property at least three (3) days prior to the meeting, or notice must be provided by a method otherwise reasonably calculated to inform the Owners of the meeting.

**Section 5.8: Waiver of Notice.**

Any Management Committee Member may, at anytime, waive notice of any meeting of the Management Committee in writing, and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a Management Committee Member at any meeting of the Management Committee shall constitute a waiver of notice by the Management Committee Member, except where the Management Committee Member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all Management Committee Members are present at any meeting of the

Management Committee, no notice to Management Committee Members shall be required and any business may be transacted at the meeting.

NOTES

**Section 5.9: *Quorum and Acts.***

At all meetings of the Management Committee a majority of the existing Management Committee Members shall constitute a quorum for the transaction of business and the acts of the majority of the Management Committee Members present shall be the acts of the Management Committee. If, at any meeting of the Management Committee, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

## ARTICLE VI

### *POWERS, RIGHTS AND DUTIES OF THE MANAGEMENT COMMITTEE*

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#### **Section 6.1: General Powers and Duties.**

The Management Committee shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law, the Declaration or by these Bylaws directed to be exercised and done by the Owners.

#### **Section 6.2: Specific Powers.**

In addition to powers imposed by the Declaration, these Bylaws or by resolutions of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, the Management Committee shall have the power to:

(a) Adopt and publish rules and regulations governing the use of the Common Area, including any improvements and amenities located thereon, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof.

(b) As specified in the Declaration, suspend the voting rights and right to use of any recreational facilities located on any Common Area of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations or any provisions of the Declaration.

(c) Declare the office of a member of the Management Committee to be vacant in the

event such member shall be absent from three (3) consecutive regular meetings of the Management Committee.

(d) Employ a manager, independent contractor, or such other individuals, entities or employees as they deem necessary and to prescribe their duties.

#### **Section 6.3: Specific Duties.**

In addition to duties imposed by the Declaration, these Bylaws or by resolutions of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, the Management Committee shall have the duty to:

(a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such a statement is requested in writing by twenty-five percent of the members who are entitled to vote;

(b) Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) As more fully provided in the Declaration, to:

(1) Fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period;

(2) Send written notice of each Assessment to every Owner subject thereto at least thirty (30) days in advance of each

Annual Assessment period;

(3) Foreclose the lien against any Lots for which Assessments are not paid within thirty (30) days after the due date thereof or to bring an action at law against the Owner personally obligated to pay the same.

(d) Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid in accordance with the Declaration. A reasonable charge may be made by the Management Committee for the issuance of these certificates.

(e) Procure and maintain adequate liability and hazard insurance on property owned by the Association or maintained by the Association if required by the Declaration or any supplemental declaration annexing Additional Property to the Community.

(f) Cause all officers or employees having fiscal responsibilities to be bonded as it may deem appropriate.

(g) Cause to be maintained the Common Area and any other areas shown on the Plat that may be owned by governmental entities who are not maintaining such areas and any other property required to be maintained by the Declaration or any supplemental declaration annexing Additional Property to the Community.

(h) Establish and maintain the financial accounts of the Association.

(i) Establish a budget for payment of all Common Expenses of the Association, and institute and maintain a voucher system for payment, which shall require a sufficient number of signatories thereon as may be

reasonably necessary to prevent any misuse of the Association's funds.

(j) Prepare and distribute annual financial statements for the Community to each Owner.

(j) At least annually, the review of the insurance coverage of the Association as provided in the Declaration.

(k) File the Annual Report with the Utah Secretary of State, Department of Corporations and Commercial Code.

(l) Prepare or cause to be prepared and filed any required income tax returns or forms.

(m) In addition, the Management Committee shall appoint such other committees as deemed appropriate in carrying out its purpose.

## NOTES



## ARTICLE VII

### *OFFICERS AND THEIR DUTIES*

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#### **Section 7.1: Designation and Qualification.**

(a) Designation. The principal officers of the Association shall be a president, a vice-president, a secretary and a treasurer. The Management Committee Members may designate the office of assistant treasurer and assistant secretary.

(b) Qualifications. The president and vice-president shall be members of the Management Committee, but the other officers need not be Management Committee Members. Any Management Committee Member may be an officer of the Association.

(c) Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices specified in subsection (a) of this section.

(d) Special Appointments. The Management Committee may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Management Committee may, from time to time, determine.

#### **Section 7.2: Election and Vacancies.**

The officers of the Association may be elected by the Management Committee at any Management Committee's meeting to serve until their respective successors are elected at the next organizational meeting. If any office becomes vacant by reason of death, resignation, removal disqualification or any other cause, the Management Committee shall

elect a successor to fill the unexpired term at any meeting of the Management Committee.

#### **Section 7.3: Resignation.**

Any officer may resign at any time by giving written notice to the Management Committee, the president or the secretary. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

#### **Section 7.4: Removal of Officers.**

Officers shall hold office at the pleasure of the Management Committee. Upon an affirmative vote of a majority of the members of the Management Committee any officer may be removed, either with or without cause.

#### **Section 7.5: Compensation of Officers.**

No officer who is a member of the Management Committee may receive any compensation from the Association for acting as an officer, unless the compensation is authorized by a binding vote of the Owners. The Management Committee may fix any compensation to be paid to any officers who are not also Management Committee Members.

#### **Section 7.6: Duties of Officers.**

The duties of the officers are as follows:

(a) President. The president shall be the chief executive officer of the Association. He or she shall preside at all meetings of the

## NOTES

Association and of the Management Committee. The president shall have all of the general powers and duties which are usually vested in the office of president of an association. The president shall have the authority to sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(b) Vice-President. The vice-president shall act in the place and stead of the president in the event of the president's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Management Committee. The Vice-President shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

(c) Secretary/Treasurer. The secretary shall keep the minutes of all meetings of the Management Committee and the minutes of all meetings of the Association, have charge of such books and papers as the Management Committee may direct, and in general, perform all the duties incident to the office of secretary. The secretary shall have responsibility for the Association's funds and securities not otherwise held by a managing agent, and shall be responsible for causing full and accurate accounts of all receipts and disbursements to be kept in books belonging to the Association. The secretary shall be responsible for causing the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Management Committee and disbursing funds as directed by resolution of the Management Committee.

## ARTICLE VIII

### *INDEMNIFICATION OF OFFICERS AND MANAGEMENT COMMITTEE MEMBERS*

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Each officer and Management Committee Member of the Association, in consideration of his or her services, shall be indemnified by the Association to the extent permitted by law against expenses and liabilities reasonably incurred by him or her in connection with the defense of any action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a Management Committee Member or officer of the Association. The foregoing right to indemnification shall be exclusive of any other rights to which the Management Committee Member or officer or person may be entitled by law or agreement or vote of the members or otherwise.

### NOTES

## ARTICLE IX

### RECORDS AND AUDITS

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The Association shall maintain within the State of Utah all documents, information and other records of the Association in accordance with the Declaration, these Bylaws and the Utah Revised Nonprofit Corporation Act in the manner prescribed by a resolution adopted by the Management Committee.

#### **Section 9.1: General Records.**

(a) The Management Committee and managing agent or manager, if any, shall keep detailed records of the actions of the Management Committee and managing agent or manager; minutes of the meetings of the Management Committee; and minutes of the meeting of the Association.

(b) The Management Committee shall maintain a Book of Resolutions containing the rules, regulations, and policies adopted by the Association and Management Committee.

(c) The Management Committee shall maintain a list of Owners and a list of all Mortgagees of Lots. The list of Owners shall specify whether the Owner is an Owner in Good Standing or a Suspended Owner.

(d) The Association shall retain within this state all records of the Association for not less than the period specified in applicable law, except that:

(1) Documents of a permanent nature such as the following, if available, must be maintained as permanent records of the Association:

(i) The as-built architectural, structural, engineering,

mechanical, electrical and plumbing plans;

(ii) The original specifications, indicating all subsequent material changes;

(iii) The plans for underground site service, site grading, drainage and landscaping together with cable television drawings;

(iv) Any other plans and information relevant to future repair or maintenance of the property; and

(v) A list of the general contractor and the electrical, heating and plumbing subcontractors responsible for construction or installation of common areas;

(2) Proxies and ballots must be retained for one year from the date of determination of the vote.

#### **Section 9.2: Records of Receipts and Expenditures.**

The Management Committee or its designee shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Community, itemizing the maintenance and repair expenses of the Common Area or Association property and any other expenses incurred.

#### **Section 9.3: Assessment Roll.**

The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Lot. The account shall designate the lot number, the name and address of the Owner or Owners, the amount

of each Assessment against the Owners, the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

**Section 9.4: *Payment of Vouchers.***

The treasurer shall pay all vouchers up to One Thousand Dollars (\$1,000) signed by the president, managing agent, manager, or other person authorized by resolution of the Management Committee. Any voucher in excess of \$1,000 shall require the signature of the president.

**Section 9.5: *Financial Reports and Audits.***

(a) An annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Management Committee to all Owners and to all mortgagees of Lots who have requested the same in writing within ninety (90) days after the end of each fiscal year.

(b) From time to time the Management Committee, at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association and furnish copies thereof to the Owners and Mortgagees of Lots. At any time any Owner or Mortgagee may, at such Owner's or Mortgagee's own expense, cause an audit or inspection to be made of the books and records of the Association.

**Section 9.6: *Inspection of Records by Owners.***

(a) Except as otherwise provided in Section 9.7 below, all records of the

Association shall be reasonably available for examination by an Owner and any Mortgagee of a Lot pursuant to rules adopted by resolution of the Management Committee.

(b) The Management Committee shall maintain a copy, suitable for the purposes of duplication, of the following:

(1) The Declaration, Bylaws and any amendments in effect or supplements thereto, and rules and regulations of the Association.

(2) The most recent financial statement prepared pursuant to Section 9.5 above.

(3) The current operating budget of the Association.

(c) The Association, within five (5) business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under Subsection (b) of this section.

(d) The Management Committee, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

**Section 9.7: *Records Not Subject to Inspection.***

Records kept by or on behalf of the Association may be withheld from examination and duplication to the extent the

records concern:

(a) Personnel matters relating to a specific identified person or a person's medical records.

(b) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.

(c) Communications with legal counsel that relate to matters specified in Subsections (a) and (b) of this section.

(d) Disclosure of information in violation of law.

(e) Documents, correspondence or management or Management Committee reports compiled for or on behalf of the association or the Management Committee by its agents or committees for consideration by the Management Committee in executive session held in accordance with Section 5.4(b) above.

(f) Documents, correspondence or other matters considered by the Management Committee in executive session held in accordance with Section 5.4(b) above.

(g) Files of individual Owners, other than those of a requesting Owner or requesting mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the association.

**Section 9.8: *Notice of Sale or Mortgage.***

Immediately upon the sale or Mortgage of any lot, the Owner shall promptly inform the secretary or manager of the name and address of the purchaser, vendee or Mortgagee.

## ARTICLE X

### ASSESSMENTS

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#### **Section 10.1: Assessments.**

#### NOTES

Each member is obligated to pay to the Association Assessments specified in the Declaration which are secured by a continuing lien upon the lot against which the assessment is made.

#### **Section 10.2: Remedies for Nonpayment of Assessments.**

Any Assessments or portions thereof which are not paid when due shall be delinquent and subject to the remedies specified in the Declaration. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment.

#### **Section 10.3: No Waiver for Non-Use of Common Areas.**

No Owner may waive or otherwise escape liability for the Assessment provided for in the Declaration by non-use of the Common Area or abandonment of the Owner's Lot.

## ARTICLE XI

### AMENDMENTS

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#### **Section 11.1: *How Proposed.***

NOTES

Amendments to the Bylaws shall be proposed by either a majority of the Management Committee or by Owners holding at least thirty percent (30%) of the voting rights. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon.

#### **Section 11.2: *Adoption.***

Amendments may be approved by the Association at a duly constituted meeting or meeting by written ballot in lieu of a meeting conducted pursuant to Section 2.12 above for such purpose. A vote of a majority of the Owners participating in a properly convened meeting, held for such purpose, is required for approval of any amendment.

#### **Section 11.3: *Execution and Recording.***

An amendment shall not be effective until certified by the president and secretary of the Association as being adopted in accordance with these Bylaws, acknowledged and recorded with the Recorder's Office of Salt Lake County, Utah.

#### **Section 11.4: *Challenge to Validity.***

No action to challenge the validity of an adopted amendment may be brought more than one (1) year after the amendment is recorded.



## ARTICLE XII

### MISCELLANEOUS

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#### **Section 12.1: Notices.**

(a) Association. All notices to the Association or the Management Committee shall be sent care of the managing agent or, if there is no managing agent, to the principal office of the Association or to such other address as the Management Committee may hereafter designate from time to time.

(b) Owners.

(1) Except as otherwise provided in the Declaration, these Bylaws or law, all notices to any Owner shall be sent to such address as may have been designated by him or her, from time to time, in writing to the Management Committee, or if no address has been designated, then to the Owner's Lot.

(2) If a lot is jointly owned or the lot has been sold under a land sale contract, notice shall be sent to a single address, of which the secretary has been notified in writing by such parties. If no address has been given to the secretary in writing, then mailing to the lot shall be sufficient.

#### **Section 12.2: Waiver, Precedent and Estoppel.**

No restriction, condition, obligation, or provision contained in these Bylaws or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association

as to any similar matter.

#### **Section 12.3: Severability; Number; Captions.**

The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

#### **Section 12.4: Fiscal Year.**

The fiscal year of the Association shall be determined by the Management Committee in its discretion.


#### **Section 12.5: Conflicts.**


In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

## NOTES

IN WITNESS WHEREOF, The President and Secretary of the Association have executed this instrument the day and year first hereinabove written.

LOST CANYON ESTATES HOME OWNERS  
ASSOCIATION, INC.


  
By: Clark T. Parkinson  
Its President

  
By: Kelly Jensen  
Its Secretary

**CERTIFICATION**

I, THE UNDERSIGNED, do hereby certify that I am the duly elected and acting secretary of LOST CANYON ESTATES HOME OWNERS ASSOCIATION, INC., a Utah non-profit corporation, and that the foregoing By-Laws constitute the original By-Laws of said Corporation, as duly adopted by unanimous written consent of the Management Committee thereof on this 31 day of July, 2006.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Corporation this 31 day of July, 2006.

  
By: Kelly Jensen  
Its Secretary

STATE OF UTAH                    )  
                                          ) ss.  
COUNTY OF SALT LAKE        )

On the 31 day of July, 2006, personally appeared before me CLARK T. PARKINSON and KEELY JENSEN, who being by me duly sworn did that say that they are the President and Secretary of the Association and that the seal affixed to the foregoing instrument is the seal of said Association and that said instrument was signed and sealed in behalf of said Association by authority of its Management Committee; and each of them acknowledged said instrument to be their voluntary act and deed.



  
Notary Public